IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

CRL.A.No. 627 of 1997(C)

CC.161/1986 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O), ERNAKULAM

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APPELLANT:

INCOME TAX OFFICER,
A-WARD, PARAMESWARA NAGAR,
NEAR ARCHANA & ARADHANA TEATRES,
QUILON.

BY ADV. SRI.P.K.RAVINDRANATHA MENON(SR)
SRI.N.R.K.NAIR
SRI. GEORGE K. GEORGE

RESPONDENT:

G. VISWANATHAN,
VISWANATHA CASHEW CO.,
QUILON.

BY ADV. SRI.ALAN PAPALI,M.P.PRABHANANDAN,
SMT.PINKU H.THALIATH
SRI.M.K.DAMODARAN (SR.)
SRI.ALAN PAPALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2006, ALONG WITH CRA NO. 671 OF 1997, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL. APPEAL. NO. 627 & 671 of 1997

Dated 15th day of November, 2006

JUDGMENT

The appellants are the income tax authorities who had lodged prosecutions against the respondents under section 276 C (2) of the Income Tax Act, 1960 vide C.C. No. 161/1986 and 160/1986 respectively. The court below acquitted the accused in both matters. The proceedings related to different assessment periods i.e., 1978-1979 and 1977-1978. The allegation is that the accused was liable to remit a sum of Rs. 10.85 lakhs for the assessment year 78-79 and 3.06 lakhs for the assessment year 1977-1978. The allegation is that he attempted to evade the payment of tax, subsequent on receipt of notice by transferring 12 cents of land and residential house by executing gift deed in favour of his minor sons and by causing filing of civil suits by his minor sons for declaration that the property gifted originally belonged to the children and not to the accused and that the properties were purchased by the accused from the amounts

given to them by the maternal grand father. The evidence adduced in C.C. 161/1986 consisted of the testimony of Pws 1 to 6 of whom PW1 to 5 are the officials of the Income Tax department and PW6 the elder son of the accused and Exts. P1 to P29 and D1 to D4. In C.C. 160/1986 the evidence adduced consisted of the testimony of Pws 1 to 6 the officials of Income tax department and PW7, the elder son of the accused as well as Ext. P1 to P36 and D1 to D5. The court after detailed consideration found that in the civil suit instituted by the sons of the accused was decreed and that in the same proceedings the Union of India was also a party. It was also held that the other properties of the accused were subjected to attachment but the details of encumbrance were not furnished and hence there is nothing to show that the 12 cents of land and house alone is left out. It was also pointed out that the Income Tax Authorities could have proceeded against the property in view of section 281 of the Income Tax Act as the provision declares that such transfers to evade tax are void. It also pointed out that PW6 the son of the accused who was cross examined by the prosecution has stated that the suit was instituted at the instance of the

accused to evade payment. Yet he was not declared hostile. It was taken note of that at the time of the disposal of the criminal cases the suit instituted by the sons of the accused was decreed and hence without setting aside the above decision in appeal the accused cannot be held guilty.

2. The counsel for the appellant/tax authorities had produced the decision of this court in AS 449/1989 on appeal in O.S. 26/1984 i.e., civil suit instituted by the sons of the accused as per which the findings of the lower court was set aside and matter was remitted back for fresh consideration after permitting the Income Tax authorities to be impleaded. It is submitted that subsequently the above O.S. was dismissed for non prosecution. The above fact as such has not been disputed. The counsel for the appellant has brought to the notice of this court the decision of the Supreme Court in **T.R.O v Gangadhar Viswanath Ranade (S.C.), (1998 IIR 234)** as per which the court has held that the Income Tax Authorities are not having the power under section 281 of the Income Tax Act to declare the transfers void. The Tax Recovery Officer will have to initiate proceedings for

declaration of the transfer as void and only then steps can be taken for realisation of the tax by the sale of assets. Hence evidently the two of the grounds on the basis of which the court below acquitted the accused are no longer in existence, it is submitted.

3. The other ground is that the prosecution has not produced evidence to show that the rest of the items of properties numbering 11 are encumbered and that 12 cents and the residential house is the only other item that remains unencumbered. PW2, the Income Tax Officer has admitted in his deposition that he had not tried to ascertain the liabilities on the rest of the properties and that he spoke to the Bank Manager over telephone and that he was not personally verified the documents in this regard and that the authorities have not attempted to make a valuation of the rest of the items of properties. I find that the above aspect is a very much relevant so far as the prosecution initiated are concerned. Evidently on the basis of the alienation of one item of property alone, the accused cannot be found guilty. It is also seen from the

proceedings that the accused has not suppressed the fact of gift of the property in favour of his sons as the same is mentioned in the returns filed by him.

4. In the circumstances, and in view of the principle that the accused is entitled to benefit of doubt, I find no ground to interfere in the findings of the court below in C.C. 161/1986 and 160/1986. Hence these appeals are dismissed.

K.R.UDAYABHANU,JUDGE.

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